

Before the  
Federal Communications Commission  
Washington, D.C. 20554

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Federal Communications Commission  
Office of Secretary

In the Matter of

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Amendment of Section 73.622(b),  
Table of Allotments,  
Digital Television Broadcast Stations.  
(Albany, New York)

) MB Docket No. 02-92  
) RM-10363  
)  
)

REPLY

United Communications Corporation ("United"), licensee of station WWNY-TV, Channel 7, Carthage, New York, by counsel, hereby replies to the Consolidated Opposition to Petitions for Reconsideration, dated August 16, 2004 ("Opposition"), filed by Clear Channel Broadcasting Licenses, Inc. ("Clear Channel").

The Opposition is full of *sturm und drang* about the notion that interference to two percent of the affected stations' viewers matters not at all, regardless of the absolute number of households that will lose service. However, the Opposition says nothing about the special problems faced by viewers of WWNY-TV, who have inadequate alternate sources of news and information relating to New York's North Country. In this regard, we note that station WWTI, Channel 50, Watertown, New York discontinued its locally originated newscasts earlier this month. WWTI is the only other full-service commercial television station licensed to WWNY-TV's market. In any event, because of the vagaries of UHF propagation, it is doubtful that WWTI reached any of the viewers who would lose service as a result of the allotment of DTV Channel 7 to Albany.

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Moreover, the Opposition fails to justify the underlying Bureau action substituting DTV Channel 7 for DTV Channel 4 at Albany in a manner consonant with the requirements of Section 307(b) of the Communications Act of 1934, as amended (the "Act").

On Clear Channel's side of the balance, its proposed co-location of the facilities of WXXA-DT with the facilities of WNYT-DT (Channel 12, Albany) will produce cost savings that, on this record, can only be deemed *de minimis*. In such matters, cost is only a factor where financial hardship is fully documented. *Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television*, 16 FCC Rcd 20594, 20610-12, at para. 46 (2001). It is not appropriate for the Bureau to disregard harm to thousands of members of the public from a change to the DTV Table of Allotments in favor of a party's ill-defined private interest, particularly where that private interest has not been adequately substantiated. It may not seriously be argued that Clear Channel, as one of the nation's most prosperous broadcasters, lacks the resources to construct WXXA-DT at a fully spaced location.

Section 307(b) of the Act requires the Commission make a fair, efficient and equitable distribution of broadcast channels among the several states and communities. Implicit in this standard is a requirement that fairness among the service areas affected is the key concept, rather than concerns over savings on construction budgets by Clear Channel.

On the contrary side of the balance, the Bureau's focus is not on any revenue that may be forfeited by licensees such as WWNY-TV and WABC-TV due to losses in

viewership. Rather, the issue is the interference that threatens to destroy services that viewers have come to rely on. It is axiomatic in this field that it is the right of viewers that is paramount, and not that of licensees. *Red Lion Broadcasting Co. v. FCC*, 395 US 367 (1969).

Nor can we assume that the projected interference will “likely be restored after completion of the DTV transition.”<sup>1</sup> United has the right to replicate its present NTSC operations with DTV operations on Channel 7. *Review of the Commission’s Rules and Policies Affecting the Conversion to Digital Television*, 16 FCC Rcd 20594 ¶10 (2001). Co-channel DTV-to-DTV interference is permanent. Moreover, it is more problematic than DTV-to-NTSC interference.<sup>2</sup> This phenomenon may well require WXXA-DT or WWNY-DT, or both, to reduce power considerably in order to avoid such interference.

A loss in service is *prima facie* contrary to the public interest. *Central Coast Television*, 14 FCC 2d 985, 1000 (Rev. Bd. 1968). *A fortiori*, permanent loss of service by viewers as a result of interference that could easily be avoided is contrary to the public interest – especially if weighed against Clear Channel’s claimed *de minimis* cost savings.

As United showed in its original comments, the projected interference to reception of its signal by the public is not *de minimis* in a genuine sense. To any household that loses a unique service, the loss of that service is not a *de minimis* event. Many thousands of households will be thus affected.

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<sup>1</sup> Amendment of Section 73.622(b), Table of Allotments, Digital Television Broadcast Stations (Albany, New York), Report and Order, MB Docket No. 02-92, RM-10363, ¶7 (released March 10, 2004).

<sup>2</sup> Lung, Doug, “Choosing a Final DTV Channel,” *TV Technology* (August 4, 2004) ([www.tvtechnology.com](http://www.tvtechnology.com))

The Bureau should treat Clear Channel's "cost savings" as of *de minimis* significance in the balancing of interests. On that basis, it should reconsider the proposed substitution of DTV Channel 7 for DTV Channel 4 at Albany.

Respectfully submitted,

**UNITED COMMUNICATIONS  
CORPORATION**

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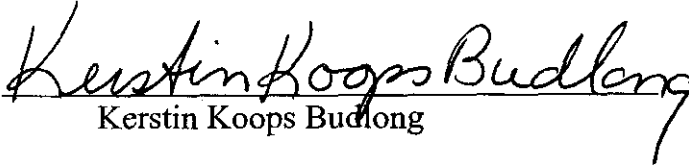
Dated: August 31, 2004

## AFFIDAVIT OF SERVICE

I, Kerstin Koops Budlong, hereby certify that on this date I caused the foregoing "Reply" to be served by first class mail, postage pre-paid, on the following:

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